

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
ALEXANDER DUNLOP,

Plaintiff,

-versus-

06 CV 433 (KMK)(JCF)

THE CITY OF NEW YORK, et al.

ECF CASE

Defendants.
----- X

ANSWER

Defendant The City of New York, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the Amended Verified Complaint ("Complaint"), respectfully alleges, upon information and belief, as follows:

AS TO THE "PRELIMINARY STATEMENT"

1. Defendant denies the allegations set forth in paragraph "1" of the Complaint, except admits that plaintiff seeks relief.

2. Defendant denies the allegations set forth in paragraph "2" of the Complaint.

3. Defendant denies the allegations set forth in paragraph "3" of the Complaint.

AS TO "VENUE"

4. Defendant denies the allegations set forth in paragraph "4" of the Complaint.

AS TO "JURY DEMAND"

5. Defendant denies the allegations set forth in paragraph "5" of the Complaint, except admits that plaintiff demands a trial by jury.

AS TO "PARTIES"

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the Complaint.

7. Defendant denies the allegations set forth in paragraph "7" of the Complaint, except admits that The City of New York is a municipal corporation duly organized and operating under the laws of the State of New York.

8. Defendant denies the allegations set forth in paragraph "8" of the Complaint, except admits that Michael Bloomberg is the Mayor of the City of New York.

9. Defendant denies the allegations set forth in paragraph "9" of the Complaint, except admits that Raymond Kelly is the Commissioner of Police.

10. Defendant denies the allegations set forth in paragraph "10" of the Complaint, except admits that Joseph Esposito is employed by the City of New York.

11. Defendant denies the allegations set forth in paragraph "11" of the Complaint, except admits that Thomas Graham is employed by the City of New York.

12. Defendant denies the allegations set forth in paragraph "12" of the Complaint, except admits that John Colgan is employed by the City of New York.

13. Defendant denies the allegations set forth in paragraph "13" of the Complaint, except admits that Maya Gomez is employed by the City of New York.

14. Defendant denies the allegations set forth in paragraph "14" of the Complaint, except admits that Defendants Bloomberg, Kelly, Esposito, Graham, Colgan and Gomez are employees of the City of New York.

15. Defendant denies the allegations set forth in paragraph "15" of the Complaint.

16. Defendant denies the allegations set forth in paragraph "16" of the Complaint.

17. Defendant denies the allegations set forth in paragraph "17" of the Complaint.

18. Defendant denies the allegations set forth in paragraph "18" of the Complaint.

19. Defendant denies the allegations set forth in paragraph "19" of the Complaint.

20. Defendant denies the allegations set forth in paragraph "20" of the Complaint.

21. Defendant denies the allegations set forth in paragraph "21" of the Complaint.

AS TO "STATEMENT OF FACTS"

22. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "22" of the Complaint.

23. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "23" of the Complaint.

24. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "24" of the Complaint.

25. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "25" of the Complaint.

26. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "26" of the Complaint.

27. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "27" of the Complaint.

28. Defendant denies the allegations set forth in paragraph "28" of the Complaint.

29. Defendant denies the allegations set forth in paragraph "29" of the Complaint.

30. Defendant denies the allegations set forth in paragraph "30" of the Complaint.

31. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "31" of the Complaint.

32. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "32" of the Complaint.

33. Defendant denies the allegations set forth in paragraph "33" of the Complaint.

34. Defendant denies the allegations set forth in paragraph "34" of the Complaint.

35. Defendant denies the allegations set forth in paragraph "35" of the Complaint.

36. Defendant denies the allegations set forth in paragraph "36" of the Complaint.

37. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "37" of the Complaint.

38. Defendant denies the allegations set forth in paragraph "38" of the Complaint.

39. Defendant denies the allegations set forth in paragraph "39" of the Complaint.

40. Defendant denies the allegations set forth in paragraph "40" of the Complaint.

41. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "41" of the Complaint.

42. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "42" of the Complaint.

43. Defendant denies the allegations set forth in paragraph "43" of the Complaint.

44. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "44" of the Complaint.

45. Defendant denies the allegations set forth in paragraph "45" of the Complaint.

46. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "46" of the Complaint.

47. Defendant denies the allegations set forth in paragraph "47" of the Complaint.

48. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "48" of the Complaint.

49. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "49" of the Complaint.

50. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "50" of the Complaint.

51. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "51" of the Complaint.

AS TO THE "FIRST CAUSE OF ACTION"

52. In response to the allegations set forth in paragraph "52" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

53. Defendant denies the allegations set forth in paragraph "53" of the Complaint.

54. Defendant denies the allegations set forth in paragraph "54" of the Complaint.

55. Defendant denies the allegations set forth in paragraph "55" of the Complaint.

56. Defendant denies the allegations set forth in paragraph "56" of the Complaint.

57. Defendant denies the allegations set forth in paragraph "57" of the Complaint.

58. Defendant denies the allegations set forth in paragraph "58" of the Complaint.

59. Defendant denies the allegations set forth in paragraph "59" of the Complaint.

60. Defendant denies the allegations set forth in paragraph "60" of the Complaint.

61. Defendant denies the allegations set forth in paragraph "61" of the Complaint.

AS TO THE "SECOND CAUSE OF ACTION"

62. In response to the allegations set forth in paragraph "62" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

63. Defendant denies the allegations set forth in paragraph "63" of the Complaint.

64. Defendant denies the allegations set forth in paragraph "64" of the Complaint.

65. Defendant denies the allegations set forth in paragraph "65" of the Complaint.

66. Defendant denies the allegations set forth in paragraph "66" of the Complaint.

AS TO THE "THIRD CAUSE OF ACTION"

67. In response to the allegations set forth in paragraph "67" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

68. Defendant denies the allegations set forth in paragraph "68" of the Complaint.

69. Defendant denies the allegations set forth in paragraph "69" of the Complaint.

AS TO THE "FOURTH CAUSE OF ACTION"

70. In response to the allegations set forth in paragraph "70" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

71. Defendant denies the allegations set forth in paragraph "71" of the Complaint.

72. Defendant denies the allegations set forth in paragraph "72" of the Complaint.

73. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "73" of the Complaint.

74. Defendant denies the allegations set forth in paragraph "74" of the Complaint.

75. Defendant denies the allegations set forth in paragraph "75" of the Complaint.

76. Defendant denies the allegations set forth in paragraph "76" of the Complaint.

AS TO THE "FIFTH CAUSE OF ACTION"

77. In response to the allegations set forth in paragraph "77" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

78. Defendant denies the allegations set forth in paragraph "78" of the Complaint.

79. Defendant denies the allegations set forth in paragraph "79" of the Complaint.

80. Defendant denies the allegations set forth in paragraph "80" of the Complaint.

81. Defendant denies the allegations set forth in paragraph "81" of the Complaint.

82. Defendant denies the allegations set forth in paragraph "82" of the Complaint.

83. Defendant denies the allegations set forth in paragraph "83" of the Complaint.

84. Defendant denies the allegations set forth in paragraph "84" of the Complaint.

85. Defendant denies the allegations set forth in paragraph "85" of the Complaint.

86. Defendant denies the allegations set forth in paragraph "86" of the Complaint.

87. Defendant denies the allegations set forth in paragraph "87" of the Complaint.

AS TO THE "SIXTH CAUSE OF ACTION"

88. In response to the allegations set forth in paragraph "88" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

89. Defendant denies the allegations set forth in paragraph "89" of the Complaint.

90. Defendant denies the allegations set forth in paragraph "90" of the Complaint.

91. Defendant denies the allegations set forth in paragraph "91" of the Complaint.

92. Defendant denies the allegations set forth in paragraph "92" of the Complaint.

93. Defendant denies the allegations set forth in paragraph "93" of the Complaint.

94. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "94" of the Complaint.

95. Defendant denies the allegations set forth in paragraph "95" of the Complaint.

96. Defendant denies the allegations set forth in paragraph "96" of the Complaint.

97. Defendant denies the allegations set forth in paragraph "97" of the Complaint.

AS TO THE "SEVENTH CAUSE OF ACTION"

98. In response to the allegations set forth in paragraph "98" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

99. Defendant denies the allegations set forth in paragraph "99" of the Complaint.

100. Defendant denies the allegations set forth in paragraph "100" of the Complaint including all of its subparts.

101. Defendant denies the allegations set forth in paragraph "101" of the Complaint.

AS TO THE "EIGHTH CAUSE OF ACTION"

102. In response to the allegations set forth in paragraph "102" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

103. Defendant denies the allegations set forth in paragraph "103" of the Complaint.

104. Defendant denies the allegations set forth in paragraph "104" of the Complaint.

AS TO THE "NINTH CAUSE OF ACTION"

105. In response to the allegations set forth in paragraph "105" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

106. Defendant denies the allegations set forth in paragraph "106" of the Complaint.

107. Defendant denies the allegations set forth in paragraph "107" of the Complaint including all of its subparts.

108. Defendant denies the allegations set forth in paragraph "108" of the Complaint.

109. Defendant denies the allegations set forth in paragraph "109" of the Complaint.

110. Defendant denies the allegations set forth in paragraph "110" of the Complaint.

AS TO THE "TENTH CAUSE OF ACTION"

111. In response to the allegations set forth in paragraph "111" of the Complaint, Defendant repeats and re-alleges all of the preceding paragraphs of the answer, as if fully set forth herein.

112. Defendant denies the allegations set forth in paragraph "112" of the Complaint.

113. Defendant denies the allegations set forth in paragraph "113" of the Complaint.

114. Defendant denies the allegations set forth in paragraph "114" of the Complaint.

115. Defendant denies the allegations set forth in paragraph "115" of the Complaint.

116. Defendant denies the allegations set forth in paragraph "116" of the Complaint.

117. Defendant denies the allegations set forth in paragraph "117" of the Complaint.

118. Defendant denies the allegations set forth in paragraph "118" of the Complaint.

119. Defendant denies the allegations set forth in paragraph "119" of the Complaint.

120. Defendant denies the allegations set forth in paragraph "120" of the Complaint.

121. Defendant denies the allegations set forth in paragraph "121" of the Complaint.

122. Defendant denies all of the remaining allegations of the Complaint.

FIRST AFFIRMATIVE DEFENSE

123. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

124. There was probable cause for plaintiff's arrest, detention and prosecution.

THIRD AFFIRMATIVE DEFENSE

125. Any and all injuries alleged in the Complaint were caused, in whole or in part, by plaintiff's culpable, negligent or intervening conduct and were not the proximate result of any act of Defendants.

FOURTH AFFIRMATIVE DEFENSE

126. This action is barred, in whole or in part, by the doctrines of *res judicata* and collateral estoppel.

FIFTH AFFIRMATIVE DEFENSE

127. Defendants have not violated any clearly established constitutional or statutory rights of which a reasonable person would have known and, therefore, they are entitled to qualified immunity.

SIXTH AFFIRMATIVE DEFENSE

128. Punitive damages are not recoverable against The City of New York. Punitive damages cannot be recovered against the other Defendants and, if available, the amount of such damages shall be limited by applicable state and federal law, including due process and other provisions of law.

SEVENTH AFFIRMATIVE DEFENSE

129. Defendants have not violated any rights, privileges or immunities secured to the plaintiff under the Constitution, the laws of the United States, the laws of the State of New York or any political subdivision thereof, nor have Defendants violated any act of Congress.

EIGHTH AFFIRMATIVE DEFENSE

130. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion.

NINTH AFFIRMATIVE DEFENSE

131. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion. Therefore, Defendant The City of New York is entitled to governmental immunity from liability.

TENTH AFFIRMATIVE DEFENSE

132. Plaintiff's claims are barred, in whole or in part, by their failure to comply with the conditions precedent to suit including, but not limited to, New York General Municipal Law §§ 50-e and 50-i.

ELEVENTH AFFIRMATIVE DEFENSE

133. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

TWELFTH AFFIRMATIVE DEFENSE

134. Plaintiff's claims are barred, in whole or in part, by the doctrine of absolute immunity.

THIRTEENTH AFFIRMATIVE DEFENSE

135. Process, or service of process, upon one or more of the Defendants was insufficient.

FOURTEENTH AFFIRMATIVE DEFENSE

136. The Court lacks personal jurisdiction over one or more of the Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

137. To the extent that Defendants used any force, it was reasonable, necessary and justified to accomplish their official duties and to protect their own physical safety and the physical safety of others.

SIXTEENTH AFFIRMATIVE DEFENSE

138. Plaintiff failed to mitigate plaintiff's damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

139. Plaintiff consented to the acts about which plaintiff complains.

EIGHTEENTH AFFIRMATIVE DEFENSE

140. Plaintiff's claims are barred, in whole or in part, by plaintiff's contributory or comparative negligence and by plaintiff's assumption of the risk.

NINETEENTH AFFIRMATIVE DEFENSE

141. Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver and estoppel.

WHEREFORE, Defendant The City of New York requests judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
April 11, 2006

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By: _____/s/_____
James Mirro (JM 2265)
Special Assistant Corporation Counsel
Special Federal Litigation Division

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ALEXANDER DUNLOP, et al.,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

ANSWER

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007